

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Case No. 07-20318

Plaintiff,

Paul V. Gadola

District Judge

vs.

CHARLES E. ARMSTRONG

Michael Hluchaniuk

Magistrate Judge

Defendant.

REVOCATION OF RELEASE AND ORDER OF DETENTION

Procedural Background

The defendant, Charles E. Armstrong, was indicted on June 20, 2007, by a grand jury in a three count Indictment charging him with Possession with Intent to Distribute Cocaine Base, in violation of 21 U.S.C. § 841; Carrying a Firearm During a Drug Trafficking Offense, in violation of 18 U.S.C. §924(c); and Felon in Possession of a Firearm, in violation of 18 U.S.C. 922(g). The defendant was arrested and initially appeared in court on October 24, 2007. He was ordered temporarily detained pending a detention hearing. On November 1, 2007, the defendant was ordered released on an unsecured bond with various conditions.

Among those conditions the defendant was ordered to refrain from possessing or using illegal substances. Information was brought to the attention of the Court by the Pretrial Services Officer that Mr. Armstrong had been using illegal drugs. A bond review hearing was subsequently conducted on February 12, 2008, and the defendant tested positive for the use of an unauthorized controlled substance (cocaine) on that date. The defendant's bond was continued pending a further hearing before this Court and the defendant was advised that he was positive again he probably would have his bond revoked. On March 7, 2008, the defendant again appeared before the Court for a further review of his bond. At the hearing the undersigned was informed by the Pretrial Services Officer that the defendant had again tested positive of the use of an unauthorized controlled substances (cocaine) on that date. He also indicated that the defendant had used illegal substances on February 5, 2008.

Applicable Law

The circumstances where a person released under 18 U.S.C. § 3142 is charged with violating the conditions of his or her release is governed by 18 U.S.C. § 3148. If a person is found to have violated the conditions of release, that person can have their release revoked and an order of detention can be entered.

Where such an allegation is made, a hearing should be conducted and if, after the hearing, it is determined that (1) there is probable cause to believe that a crime has been committed or (2) clear and convincing evidence that another violation has been committed, and, there is no condition or combination of conditions of release that will assure that the person will not flee or pose a danger to the safety of any other person or the community, or, the person is unlikely to abide by any condition or combination of conditions of release, the person “shall” be detained. § 3148(b)(1) and (2).

Additionally, if there is probable cause to believe that the person has committed a felony while on release, a rebuttable presumption arises that no condition or combination of conditions will assure that the defendant will not pose a danger to the safety of any other person or the community. *Id.*

Conclusion

Based upon the information presented at the hearing by the Pretrial Services Officer, it appears that the defendant has violated the terms of the Order Setting Conditions of Release by continuing to use illegal substances which reasonably can be considered the commission of a felony in the present circumstances due to the fact that the controlled substance the defendant possessed and used was cocaine.

Possession of cocaine under state law is a felony. Additionally, there is not currently a suitable third party custodian so that is not a viable option at the present time. The defendant's continued use of controlled substances is a violation of his bond conditions and it is clear that the defendant is unlikely to abide by the conditions of his release.

IT IS THEREFORE ORDERED that the bond previously set in this matter is revoked and that the defendant is detained pending the trial or a change in circumstances warranting the defendant's release on bond.

Date: March 10, 2008

s/ Michael J. Hluchaniuk
Michael Hluchaniuk
Magistrate Judge

CERTIFICATE OF SERVICE

I hereby certify that on March 10, 2008, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send electronic notification to the following: Nancy A. Abraham, AUSA, Kenneth Sasse, Federal Defender Office, and I hereby certify that I have mailed by United States Postal Service/hand-delivered the paper to the following non-ECF participants: Pretrial Services Officer - Flint, Michigan, U.S. Marshal - Flint, Michigan.

s/James P. Peltier
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